

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

RICHARD J. HERTZ et al.

Serial No.: 09/737,371

Filed: December 15, 2000

For: METHOD AND SYSTEM FOR DISTRIBUTING DIGITAL IMAGES

Attorney Docket No.: MEDO 5035 PUS

Group Art Unit: 2624

Examiner: W. Tucker

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Mail Stop Appeal Brief - Patents
Commissioner for Patents
U.S. Patent & Trademark Office
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Sir:

This Reply Brief is in response to the Examiner's Answer mailed on December 28, 2006 for the above-identified patent application.

**Claims 1-8, 10, 15-19, and 21-23 Are Patentable Under 35 U.S.C. § 103(a)
Over Savitzky and Mathias**

In their *Summary of the Invention*, Savitzky states that the image server:

1) "automatically detects the image storage device and downloads the images stored thereon, adding various data elements, such as a camera ID, date of capture, and the like"; and
2) the images stored on the image server "are also searchable by text (i.e., from the captions or titles) or by image features" (*see* Savitzky, col. 1, lines 47-51 and 57-59; emphasis added). The Examiner has inferred from these statements that "camera ID information saved as metadata is also utilized as user-specified criteria for searching and selecting digital images" as in Appellants' claimed invention (*see* Examiner's Answer, p. 6).

Appellants disagree. Savitzky discloses two different aspects of his invention which the Examiner has chosen to blur together in an attempt to achieve Appellants' claimed

invention. Savitzky discloses data elements, such as camera ID, which are automatically added to images by the image server (*see* Savitzky, col. 1, lines 47-51). Separately, Savitzky discloses that the images stored on the image server may be searchable by text (that is, captions or titles) or by image features, wherein this text is added by a user (*see* Savitzky, col. 1, lines 57-59 and col. 3, lines 7-20). The Examiner insists that the data elements added automatically by the image server must be searchable, otherwise there would be no reason for them. From this, the Examiner makes the leap that “[t]he source information is interpreted as both the searchable text and as image features” (*see* Examiner’s Answer, p. 6), and thus concludes that Savitzky discloses this aspect of Appellant’s claimed invention.

Appellants assert that the Examiner has mischaracterized Savitzky. Savitzky’s disclosure of what is searchable is limited to textual captions or titles added to images by a user, and is not logically extended to what amounts to a date/ID stamp added to images automatically by the image server. Furthermore, the Examiner has mischaracterized Appellants’ specification in relation to FIG. 4 and as to what is encompassed by “source” as claimed by Appellants. The Examiner has asserted that this figure allows “source” to be interpreted as a description of who is in an image and from this, in an attempt to diminish this claim limitation, makes another leap to suggest that “source” is just one of several types of well-known metadata that may be searched. The Examiner’s interpretation of FIG. 4 is clearly incorrect. Appellants can only guess that the Examiner has confused CONTENT with SOURCE in the lower right software agent box 34. In actuality, the match between the criteria of this software agent and the image connected thereto by a solid line (as described at p. 7, line 14 of Appellants’ specification) shows a clear correspondence:

Software Agent 34

Image 42

CONTENT: Grandchildren----- > Kids on Vacation

Source: Jenny Miller or Jack Smith----- > Jenny Miller

Price: No Charge----- > No Charge

The meaning of “source” in Appellants’ disclosure is unambiguous, and the Examiner cannot use Appellants’ specification as an excuse to sweep in any and all information associated with an image to be categorized as such.

At p. 23 of the Examiner’s Answer, the Examiner asserts:

Savitzky [sic] discloses the desire and capability to search much more than just captions and titles. Savitzky teaches that the images are “searchable by text (i.e., from the captions or titles) or by image features.” It is clear from [sic] the language of Savitzky that captions and titles are only two examples of the types of text to be searched. This means that more forms of text are also searched indeed inferring that any text associated with the images may be searched. It [sic] is clear that Savitzky [sic] discloses that other text is associated with the images such as user ID, GPS location etc. Furthermore Savitzky explicitly teaches searching on text or “image features.” Given Savitzky’s disclosure of source metadata, this implies that image features would include such data.

Again, the Examiner has mischaracterized Savitzky. Savitzky discloses only the desire and capability to search captions and titles. The Examiner is misinterpreting the statement “(i.e., from the captions or titles)” by Savitzky to be open-ended and exemplary. In fact, this statement is closed, as “i.e.” has the meaning of “that is.” Savitzky’s disclosure does not give the Examiner the latitude to assume that “more forms of text are also searched indeed inferring that any text associated with the images may be searched.” Savitzky had the opportunity to disclose that any data associated with the images could be used to evaluate and select digital images, but did not. Likewise, “image features” - a term given no explanation by Savitzky - may not be reasonably construed to encompass ID information mentioned with reference to another aspect of his invention.

The Examiner insists that hindsight gained from Appellants' specification is not relied upon to teach that source metadata may be used to select images. At p. 19 of the Examiner's answer, the Examiner states:

Let it be clear that Appellant's application is not relied upon to teach that source metadata may be used to select images. Any and all metadata attached to image data files are well known in the art to be used to categorize and characterize image data files.

If this is indeed the case, why isn't the Examiner able to apply such a reference that teaches evaluating and selecting digital images based on a desired source as in Appellants' claimed invention?

Furthermore, neither Savitzky nor Mathias recognize a problem solved by Appellants' claimed invention, namely the ability to provide digital images from a particular source to a user whenever the images become available. As recognized by the Examiner, Savitzky is not concerned with obtaining digital images from a desired source as they become available, but instead utilizes InterForm documents for one-time requests to display images from a particular roll date and add caption information. Mathias focuses on searching for images with particular image pattern characteristics, and does not recognize the benefit of providing images to a user from a desired source whenever the images become available. The combination of Savitzky, which does not disclose automatically using user-specified criteria including a desired image source to evaluate and select digital images, and Mathias, which does not disclose any method for image selection besides the evaluation of image pattern characteristics, does not result in Appellants' claimed invention.

The Examiner's understanding and characterization of the cited references are submitted to be incorrect. The rejections of claims 1-12, 15-19, and 21-29 under 35 U.S.C. § 103(a) are in error for the reasons discussed above and in Appellants' initial brief. Accordingly, it is respectfully requested that these rejections be reversed.

Respectfully submitted,
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